RECORD AND BRIEFS

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In The

# Supreme Court of the United States

WELLS FARGO &CO.
and WELLS FARGO BANK, N.A.,
*Petitioners,*

v.

CITY OF MIAMI,
*Respondent.*

On Writ of Certiorari to
the United States Court of Appeals
for the Eleventh Circuit

## BRIEF AMICUS CURIAE OF URBAN HISTORIAN LEO HOLLIS IN SUPPORT OF RESPONDENT

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## IDENTITY AND INTEREST OF AMICUS CURIAE[1]

*Amicus Curiae* Leo Hollis is an urbanist, historian, and author with a deep interest in the social future of the city. He has written numerous books and articles exploring and addressing how cities can impact society. His most recent book, *Cities Are Good for You: The Genius of the Metropolis*, which discussed how cities can be a source of great good in our society, was an international bestseller. Hollis studies and explores how cities can deliver a better life and a better world. He has investigated how cities all over the world are tackling diversity, segregation, climate change, population growth, poverty, shifting work patterns, and the maintenance of the fragile trust of their citizens. He has been invited to talk on urban matters around the world, and frequently writes articles discussing the role of the city in shaping human society. He is a strong advocate for the protection of everyone's right to enjoy the benefits that come from the urban experience.

As an expert in the field of urbanism and urban studies, *Amicus* is uniquely qualified to address the interconnectedness of all aspects of a city. His knowledge brings an important perspective on the

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[1] Each party has consented to the filing of this brief, and copies of the consents have been lodged with the Clerk of the Court. Pursuant to this Court's Rule 37.6, *Amicus* states that this brief was not authored in whole or in part by counsel for any party and that no person or entity other than *Amicus* or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

extent to which Wells Fargo was materially involved in the worsening of the city during the period it aggressively sold bad loans to predominantly Black and Hispanic customers. Not only were these practices racially discriminatory, but the policy as whole had a widespread impact on the social fabric of the city.

We submit this brief in support of respondents in order to respectfully urge this Honorable Court to uphold the decision of the United States Court of Appeals for the Eleventh Circuit, and find that the City of Miami is an aggrieved party within the meaning of the Fair Housing Act, and that protecting citizens from the adverse health and economic consequences associated with predatory lending practices is within the City's zone-of-interests.

## SUMMARY OF ARGUMENT

For much of its history Miami, like many other American municipalities, was segregated along color lines. By law and by custom, the city enforced policies and engaged in practices that not only denied families and individuals the right to live where they chose, but also and more significantly resulted in the racial and ethnic balkanization of neighborhoods and communities. Congress enacted The Fair Housing Act ("FHA") as a corrective to these policies and practices. In the last fifty years, Miami, thanks in part to the FHA, has made enormous progress in racial integration and diversity. In the process, the City has slowly healed itself, becoming a more welcoming and healthier place for individuals and families of diverse races and backgrounds. By

engaging in mortgage lending practices that resulted in a disproportionate and excessive number of defaults by minority homebuyers, Wells Fargo has set back that healing. The most obvious harmful consequence of Wells Fargo's actions was a loss in residential property values and a reduction of the municipal tax base. But the deeper and potentially more devastating harm Wells Fargo visited upon Miami was to the very physical essence of the city.

## ARGUMENT

### I. WELLS FARGO'S RACIALLY DISCRIMINATORY ACTIONS INJURED THE ESSENTIAL COMMUNAL CHARACTER OF THE CITY OF MIAMI

The City of Miami has suffered as a result of Wells Fargo's predatory lending and discriminatory practices, but this harm is so much more than just lost taxes and decreased home prices. Wells Fargo has attacked the very essence of the City of Miami, and all citizens of the city are harmed along with it. Because of Wells Fargo's actions, families were forced out of their neighborhoods, children had to leave their schools, and citizens lost their sense of community; in short, the City lost a part of itself. The City itself was harmed.

### A. A City Is a Living, Breathing Organism, Singular in Its Customs and Traditions, and Unique in Its Nature and Personality.

"Omnis civitas corpus est," St. Augustine teaches us, "Every city is a [living] body."[2] It is "something more than the congeries of individual men and of social conveniences – streets, buildings, electric lights, tramways, and telephones, etc.; something more, also, than a mere constellation of institutions and administrative devices – courts, hospitals, schools, police, and civil functionaries of various sorts."[3] Like all living things, a city is "a state of mind, body of customs and traditions, and of organized attitudes and sentiments that inhere in these customs and are transmitted with this tradition."[4] In other words, a city is not "merely a physical mechanism and an artificial construction. It is involved in the vital processes of the people who compose it; is a product of nature, and particularly of human nature."[5]

Life pulses through the very air of a city, a feeling of connection that inexplicably links perfect strangers who join together to become part of the city. Like people, cities have their own uniqueness, their own smells, their own tastes, their own sounds. Being in London feels different than being in New York, Paris is easily distinguishable from Los

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[2] Alexandre Dumas, *La Dame de Monsoreau* 246 (Boston, Estes and Lauriat 1893).

[3] Robert E. Park & Ernest W. Burgess, *The City* 1 (1925).

[4] *Id.*

[5] *Id.*

Angeles, Rome is not Sao Paulo. To spend any time in a city is to recognize its unique nature and inimitable sensations. Cities are more than inanimate sidewalks and streets, more than businesses and buildings, cities are alive. "The city is an organism; it has its own special powers; and over time the whole becomes more powerful than the sum of its parts. The complex city cannot be defined by a catalogue of its elements."[6]

Cities are small miracles – each singular, each with its own special personality. We speak and write and sing of cities as we do of loved ones. Ancient Greeks believed that cities had their own 'tyche' or 'conscienceness of place' often in the form of a city god or goddess. In Rudyard Kipling's The Song of Cities,[7] each city is personified, speaking of its own attributes and achievements. In modern culture, we sing of the cities we live in, from Frank Sinatra's "New York New York"[8] to Tony Bennett's I left My heart in "San Francisco,"[9] from Eminem's "8 Mile"[10] to Bruce Springsteen's "Streets of Philadelphia,"[11] from the Mamas and the Papas' "California Dreaming" [12] to Robert Johnson's "Sweet Home

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[6] Leo Hollis, *Cities Are Good for You: The Genius of the Metropolis* 24 (2013).

[7] Rudyard Kipling *Rudyard Kipling's Verse: Inclusive Edition 1885-1918* 200-03 (1922).

[8] Frank Sinatra, *New York New York* (Reprise Records 1979).

[9] Tony Bennett, *I Left My Heart in San Francisco* (Columbia Records 1962).

[10] Eminem, *8 Mile* (Interscope Records 2003).

[11] Bruce Springsteen, *Streets of Philadelphia* (Columbia Records 1994).

[12] The Mamas and the Papas, *California Dreaming* (Dunhill Records 1965).

Chicago,"[13] from Elvis Presley's "Viva Las Vegas,"[14] to Will Smith's "Miami."[15] In our imagination, the city becomes a partner, a friend, an object of longing and affection:

Sometimes I feel
Like I don't have a partner
Sometimes I feel
Like my only friend
Is the city I live in...
At least I have her love
The city she loves me[16]

Even modern scientists study cities as actual living entities, using theories of biology, and applying them to cities and urban growth, and finding that, "the city itself can be viewed as an organism with a metabolism that can be studied."[17] Scientists have examined cities and found that the way in which a city develops follows universal laws that govern the growth all organic systems. Geoffrey West, a theoretical physicist, and one of the leading scientists working on a scientific model of cities spoke to this phenomenon, saying, "[w]hat was discovered was that [cities] behaved sort of like biology." [18]

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[13] Robert Johnson, *Sweet Home Chicago* (Vocalion 1937).
[14] Elvis Presley, *Viva Las Vegas* (RCA Records 1964).
[15] Will Smith, *Miami* (Sony Records 1998).
[16] Red Hot Chili Peppers, *Under the Bridge* (Warner Bros. 1992).
[17] Thomas E. Graedle, *Industrial Ecology and the Ecocity*, 29 The Bridge 10, (1999).
[18] *WHY CITIES KEEP GROWING, CORPORATIONS AND PEOPLE ALWAYS DIE, AND LIFE GETS FASTER A Conversation With Geoffrey West [5.23.11]*, Edge (May 23, 2011), https://www.edge.org/conversation/geoffrey-west.

Essentially, science has now proven that cities are in fact alive, and not just in a metaphorical sense, but in a very real and identifiable way.

Because a city is so much more than just a collection of buildings and streets, the harm that Wells Fargo caused the City of Miami is so much more than the economic damage to those buildings and streets and the lost taxes related thereto. Wells Fargo attacked the living body and harmed the very physical self of the city.

### B. A City is the Sine Qua Non of Culture, Without Which Human Experience Would be Devoid of Community, Philosophy, Religion, Science, and Art

"All the good things of the earth flow into [the] city,"[19] Pericles of Ancient Athens once said. Here in America, the city "should be a collection of communities where every member has a right to belong.... It should be a place where each of us can find the satisfaction and warmth which comes from being a member of the community of man."[20] A city is a place for people. In other words, a city's purpose, the very reason for its existence, is to bring people together. Indeed, according to historian and

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[19] Donald Kagan, *Pericles of Ancient Athens and the Birth of Democracy* 110 (1998).

[20] Lyndon B. Johnson, U.S. President, Special Message to Congress on the Nation's Cities (March 2, 1965) *in Public Papers of the Presidents of the United States: Lyndon B. Johnson book 1* 240 (1965).

sociologist Lewis Mumford, to a large extent, cities are what make us "fully humanized."[21]

Cities like Miami make us better. They expose us to other viewpoints, to other people, and to other ideas. Like a loving parent, the city embraces us and helps us learn and grow, creating a space for culture and experience; cities present us with opportunities that open our eyes, minds, and hearts. In that way, the city is the pinnacle of human society and civilization:

> The city. as one finds it in history, is the point of maximum concentration for the power and culture of a community. It is the place where the diffused rays of many separate beams of life fall into focus, with gains in both social effectiveness and significance. The city is the form and symbol of an integrated social relationship: it is the seat of the temple, the market, the hall of justice, the academy of learning. Here in the city the goods of civilization are multiplied and manifolded; here is where human experience is transformed into viable signs, symbols, patterns of conduct, systems of order. Here is where the issues of civilization are focused: here, too, ritual passes on occasion into the active drama of a fully

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[21] Lewis Mumford, *The Culture of Cities* 481 (1938).

differentiated and self-conscious society [22]

Cities are places where humanity is both experienced and created. Cities are places where we live, work, make friends, and raise families. In ancient times, cities were places of safety, where societies could flourish surrounded by high city walls. Likewise, today, people live in cities to be a part of society and play a role in making it flourish.

*Amicus* Leo Hollis, a historian, urbanist, and author of the bestselling book *Cities Are Good for You: The Genius of the Metropolis*, says it best:

> Put simply, cities are places where strangers meet, and when that happens something extraordinary occurs. By coming together, learning to live and engage with each other on the street corner and the public spaces of the metropolis, we learn the rules of citizenship, the essential practises of how to get along. In addition, as we meet in that place, we collectively become more than the sum of our individual parts. It is only on the corner where we can build our future civil society.[23]

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[22] *Id.*

[23] Leo Hollis, *In Praise of Street Corners*, citiesaregoodforyou (April 7, 2016), https://citiesaregoodforyou.com/2016/04/07/in-praise-of-street-corners/.

Cities exist in order to create culture: "culture as the transformation of power into polity, of experience into science and philosophy, of life into the unity and significance of art: of the whole into that tissue of values that men are willing to die for rather than forswear – religion. The culture of cities is ultimately the culture of life in its higher social manifestations."[24]

The goal of a city then is perhaps the loftiest goal of all humankind, for it is both the goal *to* unite us all, and it is the goal *that* unites us all. Cities make each and every one of us the best we can possibly be, and by so doing, make humanity the best it can possibly be.

### C. A City Creates Diversity and Diversity Creates a City

Shakespeare wrote: "what is the city but the people."[25] People are the foundation of the city; people are the city. Seventh-century Spanish archbishop St. Isidore of Seville authored the encyclopaedia *Etymologiae*; his entry about cities is profound, he wrote, "a city (*civitas*) is a multitude of people united by a bond of community, named for its 'citizens' (*civis*), that is, from the residents of the city...[it] is not the stones, but the inhabitants."[26] A city means people, but not just a collection of people who all happen to live in the same geographical area. A city is a community of people who share life

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[24] Lewis Mumford, *The Culture of Cities* 492 (1938).

[25] William Shakespeare, *Coriolanus* act 3, sc. 1.

[26] Stephen A. Barney et al, *The Etymologies of Isidore of Seville* 305 (2006).

together, however much or little they know about those with whom they live.

While a city is not just buildings and streets, it is not just people either, it is the coming together of these components that creates the city. The city is brought to life by the interplay between its various elements, between its streets and street vendors, its buildings and builders, its shops and shoppers. As people meet each other and are exposed to new worldviews and opinions, life is breathed into the city. As people from different backgrounds and cultures mingle together, the city becomes stronger, more vibrant, more alive. The city is a body in the same way Paul spoke of the church of Christ in his letter to the Corinthians: "For as the body is one, and hath many members, and all the members of that one body, being many, are one body."[27] Although a city, like a body, is made up of many different parts, it is only when these individual members of society come together that the city can fulfil the true measure of its creation.

Diversity creates a city, and a city creates diversity, the two are interlinked. The goal, however, is not diversity in and of itself, the goal is to make us human, and diversity is what gets us there. Aristotle taught that "a city is made up not only of many human beings but also human beings who differ in kind. No city comes into existence from those who are all alike."[28] In his book *Cities Are Good for You: The Genius of the Metropolis*, Leo Hollis writes, "the

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[27] 1 Corinthians 12:12 (King James).

[28] Aristotle, *The Politics of Aristotle* 36 (Peter L. Phillips Simpson trans., University of North Carolina Press 1997).

city is more than just a crucible where cultures come together and mix; it is a place where something completely new is formed."[29] The greatness of a city, its development, progression, and success, depends in large part on its diversity. "Cities breed innovation by putting people together with diverse views in close proximity."[30] Economist Edward Glaeser explains: "Cities bring opportunities for wealth and for the creative inspiration that can result only from face-to-face contact with others. In fact, the crush of people living in close quarters fosters the kind of collaborative creativity that has produced some of humanity's best ideas."[31]

Living in a city, and being exposed to people of all backgrounds, is one of the reasons people live in cities. The constant access to new things, different ideas, and diverse people, fuels the creation of culture and civilization. The Project for Public Spaces, a non-profit organization dedicated to building stronger communities, writes, "one of the major reasons people are attracted to a city is the simple desire to be around a wide range of people and communities."[32]

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[29] Leo Hollis, *Cities Are Good for You: The Genius of the Metropolis* 345 (2013).

[30] Lance Hosey, *Why Cities are Smarter*, Huffington Post (May 6, 2014, 6:40 pm), http://www.huffingtonpost.com/lance-hosey/urbanization-why-cities-are-smarter_b_4914383.html.

[31] *Id.*

[32] *It Takes Great Places to Create Great Cities*, Project for Public Spaces, http://www.pps.org/reference/ittakesgreatplacestocreategreatcities/. (last visited Oct 1, 2016).

Jane Jacobs, one of New York's most influential urbanists wrote, "[c]ities have the capability of providing something for everybody, only because, and only when, they are created by everybody."[33] When people are excluded from taking part in the creation of a city; when certain groups are forced to leave; when neighborhoods are disrupted and begin to degrade, the city changes, a part of what made it great is removed, and the city itself is worse off because of it. When citizens are deprived of the association and interaction with others who are different than they are, the light of the city begins to dim. When inhabitants of a community are separated and forced to move away, the very essence of the city is destroyed, and the lofty goal that the city seeks to accomplish is made that much harder to reach.

Miami is not now, nor has it ever been a perfect city; no city is. But Miami, like all other cities, strives to overcome her problems and faults, and become better. Wells Fargo prevented Miami from doing this. When Wells Fargo engaged in discriminatory lending, with the result that minority groups were forced out of communities within the city, those communities lost the benefits that come with having a diverse community, and the city as a whole was injured. While the city suffered economic damages because of Wells Fargo's actions, the economic damage may well be the least of the harm that the city felt. Wells Fargo attacked the City of Miami, choking certain communities and groups of people, thereby injuring the living body of the city,

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[33] Jane Jacobs, *The Death and Life of Great American Cities* 238 (1961).

and all members of that body. The city itself suffered; it is not as bright, as vibrant, as happy, as diverse, as alive as it once was. Or, to put it another way, it is not as much of a city as it once was.

## II. THIS COURT HAS LONG RECOGNIZED INSTITUTIONAL DIVERSITY AS A COMPELLING INTEREST CENTRAL TO THE EFFECTIVE FUNCTIONING OF PUBLIC AND PRIVATE INSTITUTIONS

The fact that Wells Fargo's discriminatory practices essentially made the City of Miami less diverse means that Wells Fargo harmed one of Miami's core functions as a municipality. While this Court's jurisprudence on the constitutional value of diversity has not necessarily focused closely on municipalities, its recognition of the importance of diversity in the university and public education context is directly relevant in determining the harm that Wells Fargo has visited upon Miami.[34]

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[34] In order to have standing a "plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized... and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). The Court has recognized that preventing an individual or institution from achieving its goal harms it. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 182 (2000) (A plaintiff who wanted "to fish in the river at a specific spot" but did not because of discharge from a factory was held to have standing.). This Court has also recognized that the community is harmed under the FHA when housing discrimination occurs. *Trafficante*

### A. Institutionally, Diversity is Central to The Pursuit of Academic Freedom

This Court has a long tradition of recognizing the needs of an institution to pursue its goals. Academic freedom has been long held to be a central goal of a university *See Sweezy v. State of N.H. by Wyman*, 354 U.S. 234, 250 (1957). Preventing a university from achieving its goal of academic freedom harms it in the same way as reducing a city's diversity visits upon it the sort of harm sufficient to grant it standing to sue.

Whether an institution has suffered a cognizable harm for purposes of Article III standing turns on the question of the fundamental purpose of the institution. Just as the purpose of a city is to protect its citizens and improve their lives, the purpose of a university is to facilitate academic freedom and the free exchange of ideas, and thereby improve society's knowledge. The Court has held time and time again

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*v. Metropolitan Life Ins. Co.*, 409 U.S. 205, 211 (1972) ("The person on the landlord's blacklist is not the only victim of discriminatory housing practices; it ... 'the whole community.'"). The Court has also recognized that certain functions are so central that taking them away from an institution harms them. "[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. v. Brock*, 477 U.S. 274, 282, (1986) (citing *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)).

that, because the fundamental purpose of these institutions is the unfettered pursuit of knowledge, they have a vested interest in diversity.

Higher education has existed in one form or another for millennia, but education in a university setting began to emerge in the twelfth century.[35] The institutions arose spontaneously from a diverse body of knowledge, including the works of Aristotle, Euclid, Ptolemy, and numerous Arab scholars.[36] Bologna, widely considered the first and most influential university, organically formed after influential professors congregated there and students followed.[37] Even at that early stage, academic freedom became an important goal of these institutions. In 1158, Emperor Fredrick issued the Constitutio Habita, which protected all scholars travelling for their studies from the interference of political authorities.[38]

The best definition of a university, that respects the long history of the institutions, is "a school of knowledge of every kind, consisting of teachers and learners from every quarter... in its essence, a place for the communication and circulation of thought, by means of personal intercourse, through a wide extent of the country."[39] The university is essentially one

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[35] Charles Homer Haskins, *The Rise of Universities* 4 (Cornell University Press 1923).

[36] *Id.* at 5.

[37] *Id.* 4-8.

[38] Jos. M. M. Hermans & Marc Nelissen, *Charters of Foundation and Early Documents of the Universities of the Coimbra Group* 30 (Leuven University Press 2005).

[39] John Henry Cardinal Newman, *Rise and Progress of Universities and Benedictine Essays* 6 (James Tolhurst DD, Birmingham Millennium Oratory Edition 2001) (1782).

body that facilitates the spread of knowledge. Academic freedom became the principle that allowed communication and circulation of thought between teachers and learners from every quarter. The importance of academic freedom became encoded in *The Magna Charta Universitatum*, a document that was signed by 388 rectors and heads of universities from all over the world. [40] It established four fundamental principles for universities:

> 1) The university is an autonomous institution... [that] must be morally and intellectually independent of all political authority and economic power. 2) Teaching and research in universities must be inseparable... 3) Freedom in research and training is the fundamental principle... [and universities must] reject[] intolerance and [be] always open to dialogue... 4) [I]ts constant care is to attain universal knowledge; to fulfil its vocation it transcends geographical and political fronteirs, and affirms the vital need for different cultures to know and influence each other.[41]

To achieve these four central goals of universities, the document lists four means:

> 1) ... [F]reedom must be made available to all members of a university community. 2) Recruitment

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[40] Observatory Magna Charta Universitatum, *The Magna Charta Universitatum*, (1988).
[41] *Id.*

> of teachers, and regulation of their status, must obey the principle that teaching and research in universities must be inseparable. 3) Each university must ... ensure that its students' freedoms are safeguarded, and that they enjoy concessions in which they can acquire the culture and training which it is their purpose to possess. 4) Universities... regard the mutual exchange of information and documentation, and frequent joint projects for the advancement of learning, as essential to the steady progress of knowledge.[42]

The Court itself has recognized that "[t]he essentiality of freedom in the community of American universities is almost self-evident." *Sweezy*, 354 U.S. at 250. In America, the chief means to pursue the goal of academic freedom has been diversity. By having a diverse university, students are able to exchange ideas across different cultures and acquire a more enriched education. As the Court said,

> The atmosphere of "speculation, experiment and creation"—so essential to the quality of higher education—is widely believed to be promoted by a diverse student body. As the Court noted in *Keyishian*, it is not too much to say that the "nation's future depends upon leaders trained

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[42] *Id.*

> through wide exposure" to the ideas and mores of students as diverse as this Nation of many peoples.

*Regents of University of California v. Bakke*, 438 U.S. 265, 312–13 (1978).

### B. Diversity is a Compelling Interest Central to the Functioning of Educational Institutions

Universities have a history of prioritizing diversity to improve the educational environment of their institutions; many have adopted specific policies to ensure a diverse student body, similar to the policies cities have adopted for diversity.[43] These universities understand that policies that improve diversity, support essential educational goals including, but not limited to, learning from dialogue across difference and that racial and ethnic diversity contribute to the "robust exchange of ideas on campus."[44] There is now significant evidence that shows enhanced learning outcomes for students in diverse educational contexts, increased intercultural and cross-racial knowledge, understanding, and empathy, better preparation for employment in the

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[43] These policies have been varied, and one university had "intensified its outreach efforts to African–American and Hispanic applicants, created new scholarship programs, opened new regional admissions centers, increased its recruitment budget, and organized recruitment events, and had spent seven years attempting to achieve its compelling interest using race-neutral holistic review without success" before they settled on a system that explicitly used race as an admission factor. *Fisher v. Univ. of Tex. at Austin*, 136 S. Ct. 2198 (2016).

[44] American Council on Education, *Does Diversity Make a Difference* 3 (2000).

global economy, and increased "democratic outcomes," including engagement in political issues and participation in democratic processes.[45]

This Court has not only agreed that diversity makes a community stronger, they have held that a University's interest in diversity is compelling enough to overcome strict scrutiny review. It was *Brown v. Board of Education* that first recognized the damage that is caused by separating races by granting "a feeling of inferiority as to their status in the community that may affect their hearts and minds in a way unlikely ever to be undone." *Brown v. Board of Education*, 347 U.S. 483, 494 (1954). The Court went on to identify that a "policy aspires to 'achieve that diversity which has the potential to enrich everyone's education and thus make a law school class stronger than the sum of its parts;' the policy does not restrict the types of diversity contributions eligible for 'substantial weight' in the admissions process, but instead recognizes 'many possible bases for diversity admissions.'" *Grutter v. Bollinger*, 539 U.S. 306, 315–16 (2003) (citing *Regents of Univ. of California v. Bakke*, at 188). These Universities made it a priority to seek "a mix of students with varying backgrounds and experiences who will respect and learn from each other." *Id.* at 314. It went on to say "[t]hese benefits are not theoretical but real, as major American businesses have made clear that the skills needed in today's increasingly global marketplace can only be

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[45] Amy Stuart Wells, et al, *How Racially Diverse Schools and Classrooms Can Benefit All Students* (February 9, 2016), https://tcf.org/content/report/how-racially-diverse-schools-and-classrooms-can-benefit-all-students/.

developed through exposure to widely diverse people, cultures, ideas, and viewpoints." *Id.* at 330. Finally, the Court has found that "[i]n seeking the "right to select those students who will contribute the most to the 'robust exchange of ideas,'" a university seeks "to achieve a goal that is of paramount importance in the fulfillment of its mission." Both "tradition and experience lend support to the view that the contribution of diversity is substantial." *Id.* at 324. Diversity is essential to a well-rounded educational experience, which the Court recognizes makes universities and other institutions stronger. Cities also benefit from diversity, because diversity is a tool that the city can use to cultivate real benefits that allows its citizens to flourish—a crucial part of its fundamental purpose.

It is not only higher education where the Court has recognized that diversity furthers an institution's purpose. The Court has acknowledged that "[t]he Nation's schools strive to teach that our strength comes from people of different races, creeds, and cultures uniting in commitment to the freedom of all." *Parents Involved in Cmty. Sch. v. Seattle Sch. Dist., No. 1*, 551 U.S. 701, 782, (2007) (Kennedy, J., concurring). The Court went on to state that "[i]f school authorities are concerned that the student-body compositions of certain schools interfere with the objective of offering an equal educational opportunity to all of their students, they are free to devise race-conscious measures to address the problem in a general way and without treating each student in different fashion solely on the basis of a systematic, individual typing by race." Id. at 788–89.

Other institutions have also pursued the goal of diversity.[46] Members of the Court have applied a similar diversity rationale to public primary and secondary schools, reasoning that "a compelling interest exists in avoiding racial isolation, an interest that a school district in its discretion and expertise may choose to pursue" *Parents Involved in Cmty. Sch.* 551 U.S. at 797. Diversity is essentially a powerful tool that any institution can use to achieve a wide variety of goals. To deprive Miami of a critical tool to improve its own livelihood harms it gravely.

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[46] Employers frequently implement affirmative action hiring programs to improve the diversity of their workplace. Employers have found that diversity leads to greater access to different perspectives and sources of information, greater understanding of customers, better communication with customers, increased legitimacy, improved performance, improved employer image, improved brand awareness, improved ability to respond and change through creativity and innovation, innovative approaches to products, and makes customers feel at home. Employers Network for Equality & Inclusion, *The Business Case for Diversity* (last visited Oct. 3, 2016), http://www.enei.org.uk/pages/the-business-case-for-diversity-.html. An affirmative action plan that was collectively bargained by an employer and a union and that reserved for black employees 50 percent of the openings in an in-plant craft training program until the percentage of black craft workers in plant was commensurate with percentage of blacks in local labor force did not violate Title VII's prohibition against racial discrimination; purposes of the plan mirrored those of the statute, the plan did not unnecessarily trammel the interests of white employees, and the plan was a temporary measure, not intended to maintain racial balance, but simply to eliminate a manifest racial imbalance. *United Steelworkers of Am., AFL-CIO-CLC v. Weber*, 443 U.S. 193, 197-208 (1979).

### C. Diversity is Similarly a Compelling Interest Central to the Functioning of Municipalities

Diversity is a compelling interest in cities as well as universities. The Court has allowed the government to implement an affirmative action hiring program based on "its long-term goal [] to attain a work force whose composition reflected the proportion of minorities and women in the area labor force." *Johnson v. Transp. Agency, Santa Clara Cty., Cal.*, 480 U.S. 616, 621–22 (1987). The lower Courts have applied the rationale in *Johnson* to a host of cases which recognized that race is a compelling interest and approved plans that gave remedial promotions to minorities in an effort to increase the diversity of a police force. *See Edwards v. City of Houston*, 37 F.3d 1097, 1102 (5th Cir. 1994). While these cases partly rely on remedying unlawful treatment of racial or ethnic groups subject to discrimination, there was a recognition that institutions value diversity and are often voluntarily implementing these affirmative action programs to reap the benefits. *See U.S. v. Paradise*, 480 U.S. 149, 166 (1987); *Johnson*, 480 U.S. at 621–22. Just as diversity is a compelling interest to a university, so too it is vital to the healthy development and maintenance of a city.

## III. LACK OF DIVERSITY HARMS THE PHYSICAL AND MENTAL HEALTH OF RESIDENTS AND DESTROYS THE CITY'S COMMUNAL SPIRIT

Miami is known for its diversity and devotes substantial time and money to cultivating a healthy

diverse environment.[47] Miami's devotion to diversity is demonstrated in part through the Community and Economic Development Department, a city agency, that uses federal and state grant money to achieve this objective.[48] The Mayor of Miami describes Miami as a city that has "embraced all nationalities, all colors, [and] all cultures."[49] Miami prides itself on being one of the most diverse cities in America.[50]

The City's interest in fair housing is clear. In the absence of fair housing, the city breaks into homogeneous, non-diverse, segregated communities, A wealth of social science data demonstrates how dangerous homogeneity can be to the city's well being.

### A. Racially Segregated Communities Experience Poorer Health Outcomes and Higher Crime Rates.

Generally, lower levels of wealth and home ownership decrease health status, [51] including

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[47] *See Mission Statement of the City of Miami Community and Economic Development Department* http://www.miamigov.com/communitydevelopment/pages/about_us/("assists in creating a viable urban community for the most needy persons in our city, while reducing poverty and embracing diversity, assisting with economic development, and improving the overall quality of life.").

[48] *Id.*

[49] *City of Miami – 2016 State of the City*, (Sep. 23, 2016), https://www.youtube.com/watch?v=RlQwGETtftc.

[50] *Id.*

[51] Dolores Acevedo-Garcia & Theresa Osypuk, *Impacts of Housing and Neighborhoods on Health: Pathways, Racial/Ethnic Disparities, and Policy Directions, in*

behavioral health, mental health, physical health, [52] and mortality.[53]

Segregated housing has been linked to lower health outcomes for citizens of various races. [54] Greater levels of segregation are associated, *inter alia*, with poorer breast cancer care for both black and white patients,[55] increased risk of heart disease and stroke deaths, [56] increased incidence of influenza,[57] earlier age of first sexual intercourse,[58] and lower birth weight infants.[59]

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*Segregation: The Rising Costs for America* 197, 205 (James Carr & Nandinee Kutty eds., 2008).

[52] *Id.* at 206-07 (individual level factors were controlled).

[53] *Id.* at 208.

[54] *Id.* at 205-27; *see generally* Sewell, *Opening the Black Box of Segregation: Real Estate and Racial Health Disparities, in Race and Real Estate* 87, 90-99 (Adrienne Brown & Valerie Smith eds., 2016) (provides an overview of the relevant literature on this issue).

[55] Jennifer Haas et al., *Racial Segregation and Disparities in Breast Cancer Care and Mortality*, 113 Cancer 2166-72.S (2008).

[56] Sophia Greer et al, *Metropolitan Racial Residential Segregation and Cardiovascular Mortality: Exploring Pathways*, 91 J. of Urban Health 499, 499 (2014).

[57] Kate Strully, *Health Care Segregation and Race Disparities: The Case of Nursing Homes and Seasonal Influenza Vaccinations*, 52 J. of Health & Soc. Behavior 510, 510 (2011).

[58] Katie Biello et al., *Racial differences in Age at First Sexual Intercourse: Residential Racial Segregation and the Black-White Disparity Among U.S. Adolescents*, 128 Pub. Health Reports 23, 23 (2013).

[59] Sue C. Grady et al., *Mediating Medical Risk Factors in the Residential Segregation and low birth weight relationship by race in New York City*, 14 Health & Place 661, 661 (2008).

Particularly vulnerable to the harm arising out of segregated housing are black citizens. Black people face the highest degrees of segregation among any racial or ethnic group in the United States.[60] Research shows that racial residential segregation is a fundamental cause of health disparities between black and white Americans because racial segregation affects socioeconomic conditions in communities, neighborhoods, and households.[61]

An increase in the level of neighborhood economic status corresponds with a significant decrease in mortality rate across all color lines and income differences,[62] which is particularly relevant in this case given that Wells Fargo's practices led to

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[60] Douglas S. Massey & Nancy A. Denton, *American Apartheid* 12, (1993); Acevedo-Garcia & Osypuk, *supra* note 51, at 205 ("Studies based on data from the American Housing Survey found that after age, income, education, and location had been controlled for, blacks were more likely than whites to live in inadequate housing").

[61] David R. Williams & Chiquita Collins, *Racial Residential Segregation: A Fundamental Cause of Racial Disparities in Health*.116 Viewpoint 404, 405 (2001); Sandi Pruitt et al., *Residential Racial Segregation and Mortality Among Black, White, and Hispanic Urban Breast Cancer Patients in Texas, 1995 to 2009*, Cancer 1845, 1852 (2015) (Segregation contributes in part to blacks dying more frequently of breast cancer.); Joseph Sudano et al., *Neighborhood Racial Residential Segregation and Changes in Health or Death Among Older Adults*, 19 Health Place 80, 85 (2013); Dara Mendez et al., *Institutional Racism, Neighborhood Factors, Stress and Preterm Birth*, 19 Ethnicity & Health 479, 479 (2014) ("Residential redlining as a form of institutional racism and neighborhood characteristic may be important for understanding racial/ethnic disparities in pregnancy and preterm birth").

[62] Nicolle Mode, *Race, Neighborhood Economic Status, Income Inequality and Mortality*, 11 PLoS ONE 7, 7 (2016).

decreased economic status within the affected neighborhoods in Miami.

Segregated neighborhoods also lead to poor health outcomes because they are particularly vulnerable to being food deserts. Food deserts are "poor urban areas, where residents cannot buy affordable, healthy food."[63] Economic segregation, *inter alia*, appears to be the cause of these food deserts.[64] As a result of the creation of food deserts, residents tend to be cut off from access to healthy food, which has a negative affect on health.[65]

Lastly, because segregated communities by definition are more racially isolated, they tend to breed greater levels of intolerance and discrimination, leading to increased levels of urban violence.[66] Inner city, minority communities that

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[63] Renee Walker et al., *Disparities and access to healthy food in the United States: A review of food deserts literature*, 16 Health & Place 876, 876 (2010).

[64] *See id.* at 877.

[65] *Id.* at 879; LaVonna Lewis et al., *African Americans' Access to Healthy Food Options in South Los Angeles Restaurants*, 95 Research and Practice 688, 672 (2005)("Poorer neighborhoods with a higher percentage of African Americans have fewer choices and more fast food restaurants"); Jason Block et al., *Fast Food Race/Ethnicity and Income*, 27 Am. J. Prev. Med. 211, 214-215 (2004) (the prevalence of fast food restaurants in black and low-income neighborhoods helps to explain high rates of obesity in these areas).

[66] *See e.g.* Eduardo Bonilla Silva, *The Social Psychology of White Habitus* ("whites segregated lifestyles psychologically leads them to develop positive views about themselves and negative views about racial others") 32 Critical Psychol. 229, 229. (2011); George Yancey, *Interracial Contact & Soc. Change* 61 (2007) ("[interracial contact matters....mostly [for] whites and only if

exhibit high rates of crime and violence do so because of social and economic conditions not experienced in mixed race and predominantly white neighborhoods.[67]

Wells Fargo's predatory lending practices have also compromised Miami's position as a protector of its immigrant citizens, by making it more difficult for Black and Latino immigrants to integrate into the city. This not only deprives Miami of the capacity to protect its citizenry, but it also deprives Miami of the benefits that flow specifically from increased immigration. Growing racial diversity over the last decade, due to increased Hispanic immigration, has contributed to the significant decline in homicide rates in U.S. cities.[68] Studies have shown that newly

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the contact is not sporadic and comes from several different sources]"), Elizabeth Griffiths, *Race, Space, and the Spread of Violence Across the City*, 60 Soc. Problems 419, 419 (2013) (citing Sampson and Wilson 1995 and Wilson 1987); Robert Sampson, *Urban Black Violence: The Effect of Male Joblessness and Family Disruption*, 93 Am. J. of Soc. 348-83 (1987) (violence in urban communities has been linked to structural economic deprivations, irrespective of the race of the individuals involved.); Elizabeth Reed et al., *Experiences of Racial Discrimination & Relation to Violence Perpetration and Gang Involvement Among a Sample of Urban African American Men*, 12 J. Immigr. Minority Health 319-26 (2010) (racial discrimination has been linked to intimate partner violence and street violence involvement.)

[67] Griffiths, *supra* note 66 at 419.

[68] Karen Parker & Richard Stanfield, *The Change Urban Landscape: Interconnections Between Racial/Ethnic Segregation and Exposure in the Study of Race-Specific Violence Over Time*, 105 Am. J. Pub. Health 1796, 1796 (2015); Jacob Stowell et al., *Immigration and the Recent Violent Crime Drop in the United States: A Pooled Cross-sectional Time Series Analysis of Metropolitan Areas*, 47 Criminology 889, 889 (2009);

arriving immigrants help to break the color line and ease racial tensions, by breaking the "2-group model" of race relations and creating more opportunity for interracial contact.[69]

### B. Racially Segregated Communities Experience Higher Levels of Racial Tensions and Tend to Hold Stereotypical or Hostile Views of Members of Other Races

In a post-apartheid, post-Jim Crow era, we often do not sufficiently appreciate that, given the opportunity, most Americans, including many of the citizens of Miami, have a preference for living in diverse communities.[70]

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Robert Sampson, *Rethinking Crime and Immigration*, 7 Contexts 28, 29 (2008) (research shows "a significantly lower rate of violence among Mexican-American [immigrants] compared to blacks and whites."); Tim Wadsworth, *Is Immigration Responsible for the Crime Drop? An Assessment of the Influence of Immigration on Changes in Violent Crime Between 1990 and 2000*, 91 Soc. Sci. Q. 531, 531 (2010) ("growth in immigration may have been responsible for part of the precipitous crime drop of the 1990s").

[69] Parker & Stanfield, *supra* note 68 at 1803 (2015).

[70] *See* Wendy Wang et al., *Americans say They Like Diverse Communities; Election, Census Trends Suggest Otherwise*, The Pew Research Center (Sep. 12, 2016 1:12PM), http://www.pewsocialtrends.org/2008/12/02/americans-say-they-like-diverse-communities-election-census-trends-suggest-otherwise/ (Most Americans say they prefer living in politically, racially, religiously or economically diverse communities. ); *Allstate/National Journal: Heartland Monitor Poll XXV* 1, 9 (2016), http://heartlandmonitor.com/wp-content/uploads/2016/01/FTI-Allstate-NJ-Heartland-Poll-XXV-Findings-Memo-Jan-11-at-4pm-ET.pdf (A majority surveyed indicated that immigration has had a positive or neutral affect

It is a fairly uncontroversial proposition that "[i]nter-racial contact matters."[71] In fact, much of the reasoning used to support the Fair Housing Act hinges on the idea that interracial contact eases racial tensions.[72]

Indeed, studies have shown that multiculturalism yields many tangible results in the everyday lives of people.[73] Contemporary social science research shows that prejudice against minority groups decreases

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on American culture overall and a majority indicated that it has had a positive or neutral affect on their community.); *see generally*, Massey & Denton, *supra* note 60 (Because of housing discrimination practices, some cities in the US exhibit racial segregation comparable to that of apartheid South Africa.).

[71] Yancey, *supra* note 66 at 61 (2007).

[72] Jean Eberhart Dubofsky, *Fair Housing: A Legislative History And A Perspective* , 8 Washburn L.J. 149, 154 (1968) ("At a time when riots threatened to close down every major city in the country and black militants preached the basic indecency of white America, a fair housing law could ease the frustration of blacks and the role of the law as a teacher might overcome the ignorance and fear of whites which previously had blocked attempts to lower a black-white barrier.").

[73] *See* Thao Le, *The Relationship Between School Multiculturalism and Interpersonal Violence: An Exploratory Study*, 81 J. of Sch. Health 688, 688 (2011) ("School multiculturalism is an important protective factor against youth violence by facilitating positive peer relationships and community engagement among youth"); Bonilla-Silva, *supra* note 66 at 229. (2011) ("whites' segregated lifestyles psychologically leads them to develop positive views about themselves and negative views about racial others"); Yancey, *supra* note 66 at 61 (2007) ("[interracial contact matters....mostly [for] whites and only if the contact is not sporadic and comes from several different sources]").

when contact with the majority group increases.[74] Research also shows that members of racially integrated communities display higher levels of interracial tolerance and understanding,[75] and that "stereotypes can be overcome with relatively superficial contact."[76]

The amount of contact that Whites have with Blacks dictates the degree to which Whites hold positive views about Blacks. [77] Furthermore, "interracial friendship is among the strongest predictors of Blacks' racial attitudes" about non-Blacks.[78] People of color with interracial networks are more likely to enjoy educational success.[79] "Self-selection is an insufficient answer as to why people of color with interracial social networks are more likely to enjoy educational success."[80] It is likely that the

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[74] Jeffrey Dixon & Michael Rosenbaum, *Nice to Know You? Testing Contact, Cultural, and Group Threat Theories of Anti-Black and Anti-Hispanic Stereotypes*, 85 Soc. Sci. Q. 257, 260 (2004) (citing Gordon Allport, The Nature of Prejudice (Doubleday 1979) (1954)); *But see* Gina Spitz, *Segregated Integration in a Racially Diverse Milwaukee Neighborhood*, 10 J. of Ethnographic & Qualitative Res. 53, 53 (2015) (racial integration causes more hostility between racial groups).

[75] Thomas Pettigrew, *Intergroup Contact Theory*, 49 Ann. Rev. Psychol. 65-85 (1998); Albert Hunter, Symbolic Communities: The Persistence and Changes of Chicago's Local Communities (1974).

[76] Dixon & Rosenbaum, *supra* note 74 at 257.

[77] Christina Mancini et al., *Whites' Perceptions About Black Criminality: A Closer Look at the Contact Hypothesis*, 61 Crime & Delinquency 996, 996 (2012).

[78] Christopher Ellison & Daniel Powers, *The Contact Hypothesis and Racial Attitudes*, 75 Soc. Sci. Q. 385, 385 (1994)

[79] Yancey, *supra* note 66 at 108 (2007).

[80] Yancey, *supra* note 66 at 108 (2007).

social capital derived from that contact provides blacks with the tools necessary for greater educational success.[81]

Studies have shown that "whites who live in relatively high multiracial areas [are] more likely to hold pro-immigrant attitudes."[82] "Persons who report Latino friendships are less inclined to accept negative assessments of the consequences of immigration, more prone to believe in the positive effects, and less willing to express support for immigration reform that reduces the number of immigrants allowed to enter the United States."[83]

This goes to show that a city, as diverse as Miami, is necessarily harmed when an actor intentionally constructs impediments to racial integration.

## CONCLUSION

Writing about the Montgomery, Alabama bus boycott Dr. Martin Luther King said that the purpose of racial integration is "reconciliation, redemption, the creation of a beloved community."[84] King's call for the beloved community was (and

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[81] *Id.*

[82] Justin Berg, *Whites' Attitudes Towards Immigrants and Immigration Policy: Are Multiracial Individuals a Source of Group Threat or Intergroup Contact?*, 47 Soc. Focus 194, 212 (2014).

[83] Christopher Ellison et al., *The Contact Hypothesis and Attitudes Toward Latinos in the United States*, 92 Soc. Sci. Q. 938, 952 (2011).

[84] Martin Luther King, Jr., *Facing the Challenge of a New Age*, collected in The Papers of Martin Luther King, Jr. Volume 3: Birth of a New Age (December 1955-December 1956).

remains) an invitation to enter into what American philosopher and theologian Reinhold Niebuhr's imagined as a covenant to build and maintain a community of loving, just, and peaceable relationships.[85] Undoubtedly, in the daily hustle and bustle of life in a modern metropolis, city managers, administrators and other officials worry less about Niebuhr's communal covenant and more about keeping transit on time, allocating police resources, or scheduling trash pickup. But, though their daily or hourly routines may be taken up by such prosaic concerns as transportation, policing, or sanitation, it still remains that at the end of the day administrators, and officials all work toward a single overriding purpose: to maintain a wholesome community, to nurture a healthy city. What is clear by now is that Wells Fargo's actions harmed Miami's economy and the financial wellbeing of some of the city's most economically vulnerable residents. What should be equally clear is that, when it dislocated and destroyed neighborhoods, Wells Fargo also harmed the very physical essence of the City of Miami, and that this physical loss is no less concrete, no less direct, and no less tangible than any economic harm Walls Fargo visited upon Miami and its people.

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[85] Reinhold Niebuhr, *Nature and Destiny of Man*, Volume I 178-264 (1964).

Respectfully Submitted,

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